

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOAN FIORE; JAVION AND SAM'S 24
HOUR TOWING SERVICE, INC.; GENE'S
TOWING, INC.; CITY WIDE TOWING,
INC.; and PAUL OTT,

Plaintiffs,

v.

CITY OF DETROIT,

Defendant.

Case No. 19-10853
Honorable Laurie J. Michelson

**ORDER PERMITTING PLAINTIFFS A SUR-REPLY ON FEDERAL WIRETAP
ACT CLAIM**

The City of Detroit filed a motion to dismiss plaintiffs' claim under the Federal Wiretap Act, 18 U.S.C. §§ 2510–23. The City's opening brief did not address whether the plaintiffs have standing, and the plaintiffs did not discuss the issue in their response. (See ECF Nos. 5, 7.) But the City then argued that the plaintiffs lack standing in its reply. (See ECF No. 9.)

Standing “is an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). If plaintiffs lack standing, the court has no subject matter jurisdiction to hear their claim. *See Cent. States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir 2005). And because the standing issue goes to this Court's subject matter jurisdiction, it “may be raised at any time, by any party or even sua sponte by the court itself.” *Ford v. Hamilton Inv.*, 29 F.3d 255, 257 (6th Cir. 1994). Thus, the Court will give the plaintiffs an opportunity, if they wish, to file a sur-reply of no more than three pages limited to the issue of standing under the Federal Wiretap Act. The sur-reply shall be filed no later than July 17, 2019.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Date: July 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record and/or pro se parties on this date, July 11, 2019, using the Electronic Court Filing system and/or first-class U.S. mail.

s/William Barkholz
Case Manager